Boston & Lowell R. R. Co., 14 Allen 429.

There must be some inducement held out by the party whose negligence is complained of. In addition to *Sweeny* v. *Old Colony & Newport R. R. Co.*, noticed in the principal case, may be cited upon this point *Hounsell* v. *Smyth*, *supra*; *Binks* v. *South Yorkshire Ry. Co.*, 32 Law Journal N. S. 26; *Carby* v. *Hill*, 93 Eng. Com. Law 556; *Hardcastle* v. *South Yorkshire Ry. Co.*, 4 Harl. & Nor. 67.

There are cases which hold that a party although a technical trespasser may recover; but for the most part these are like *R. R. Co.* v. *Stout*, 17 Wallace 657, where the plaintiff was too young to be able to take much care of himself; or like *Bird* v. *Holbrook*, 4 Bing. 628, where the setting of the spring-gun without notice, and for the express purpose of doing an injury, was held to be an inhuman and unjustifiable act; or they are cases where the negligence of the party complained of has been either gross or wilful.

C. H. W.

Court of Appeals of New York.

ADRIANCE *v.* LAGRAVE.

The surrender of fugitives from justice by one government to another, is not a duty or obligation imposed by the law of nations but is dependent on comity.

The creditors of an absconding debtor instituted proceedings by which he was criminally indicted in the state of New York, and upon demand of the United States government extradited from France where he had taken refuge and brought to New York, and was there arrested in civil actions brought in the state courts by creditors who had procured his extradition: *Held*, that such orders of arrest must be set aside.

But where the debtor was arrested at the suit of a creditor who had taken no part in the extradition proceedings, *Held*, that the arrest was valid.

APPEAL from an order of the General Term of the Supreme Court reversing an order of the Special Term of that court, denying a motion to set aside the service of the summons and complaint, and to vacate an order of arrest which had been granted.

The facts of the case were that the defendant Alfred E. Lagrave, who was in the early part of 1872 a dry goods dealer in New York city, after having made large purchases of goods from leading importers, did on Sunday, June 26th 1872, secretly abscond without paying or providing for his debts. Certain of his creditors upon this joined together for the purpose of bringing him to justice, and proceedings were thereupon taken which resulted in an indictment being found against him for burglary in the third degree under the New York statute (2 R. S. 669, § 17), and upon demand of the United States government he was delivered up by

the government of France, where he had taken refuge, and brought to New York for the ostensible purpose of being tried under the indictment. Upon his arrival here, however, orders of arrest in the civil actions brought by his various creditors were served upon him and he was held under them.

Upon motion, however, these orders of arrest were set aside where they had been obtained by creditors who had joined in procuring the defendant's extradition (*Lagrave's Case*, 14 Abb. Pr. N. S. 333, note), but were sustained in the case of the plaintiffs in the suit, and others who had taken no part in the proceedings used to bring the defendant within the jurisdiction of the court: *Adriance* v. *Lagrave*, 15 Abb. Pr. N. S. 272.

Upon appeal, however, the General Term of the Supreme Court reversed the decision at Special Term in this case and vacated the order of arrest which had been granted, and thereupon the plaintiffs appealed to the Court of Appeals.

D. M. Porter, for appellants, in addition to the cases referred to in the opinion, cited on the point that a government might deliver up a fugitive from justice although there were no treaty, cited *East India Company* v. *Campbell*, 1 Vesey Sen. 246; *Matter of Clark*, 9 Wend. 211; *Washburne's Case*, 4 Johns. Ch. 106, cited in Clark's Law of Extradition, pp. 30, 51; Vattel, b. 2, ch. 6, § 76; Heineccius, Prælec. in h. t., Grotius, b. 2, c. 21, §§ 3, 4, 5; Martin's Summary of the Law of Nations, p. 107; Story on the Const., § 1803.

Charles W. Brooke, counsel for the defendant, appeared for the purposes of the motion only, and argued that the crime of burglary in the third degree under the New York statute, was not a crime for which the defendant could be extradited under the treaty with France, and that the defendant had been brought here unlawfully and had never become subject to the jurisdiction of the New York courts.

The opinion of the court was delivered by

CHURCH, C. J.—The question whether an extradited person can be detained by arrest upon civil process has not been, that I am aware, adjudged.

The learned judge at General Term, in an able opinion in favor of setting aside the order of arrest, maintained that there was an

implied treaty obligation binding upon and enforceable by the courts, not to detain the accused for any act, criminal or civil, committed prior to the extradition, except the crime specified in the proceedings. He cited no authorities, but enforced his position by plausible and forcible arguments. I have examined the subject with some care, with a view if possible to arrive at the same result, which I regard as eminently just as a principle, but the examination has created doubts of the legal soundness of the position.

It was formerly very much questioned among jurists, whether the surrender of fugitives from justice by one government to another was a duty or obligation imposed by the law of nations, or depended upon courtesy or comity which might be or might not be exercised at the pleasure of each government without cause of complaint. In this country and in England at least it has been substantially settled that no such duty exists, and in practice it is believed that in nearly all countries, neither demand nor surrender in now made except in obedience to treaty stipulations: Kent's Com. 38, note d., 11th ed. and cases cited; Story's Conflict of Laws, § 626 and cases cited; 2 Story on Constitution, § 1808.

The defendant Lagrave was in fact delivered up under proceedings in pursuance of a treaty between the United States and France concluded in 1843, and amended in 1845, by which each government agreed "to deliver up to justice," persons accused of certain specified crimes, among which is burglary, "defining the same to be breaking and entering by night into the mansion-house of another with intent to commit felony." The indictment was for burglary in the third degree under our statute, and clearly not within the treaty, but it is not for the defendant to raise this question. The government of France had power to surrender him for any offence, and even if deceived and defrauded the defendant cannot interpose in its behalf. The question of good faith is for the two governments.

It has been decided in other actions in favor of parties who were held to have been concerned in procuring the defendant to be brought within the jurisdiction of the court, by the extradition proceedings, in bad faith, for the purpose of arresting him on civil process, that he should be discharged from arrest on the ground that such persons should not receive an advantage through their wrongful acts: 14 Abb. N. S. 333, note. But this rule does not apply to persons not concerned in the trick or device by which the

party was brought within the jurisdiction of the court: Id. and cases cited.

The other point, as to the legal right to detain the defendant for any purpose except the prosecution of the particular offence for which he was given up, presents a different question, and is the one passed upon in the negative in the court below.

In the *Caldwell Case*, 8 Blatch. C. C. 131, the prisoner was indicted for bribing an officer of the United States, and pleaded that he was a resident of Prescott, in the Province of Ontario, and Dominion of Canada, and was arrested and brought here under extradition proceedings, in pursuance of the Ashburton treaty, for forgery, to which there was a demurrer on behalf of the government. BENEDICT, J., in delivering the opinion, overruling the demurrer, held, that the prisoner could not raise the point of good faith of the extradition, as that was a question between the two governments, which the courts could not investigate; and upon the other point he added, "And I cannot say that the fact that the defendant was brought within the jurisdiction by virtue of a warrant of extradition for the crime of forgery affords him any legal exemption from prosecution for other crimes by him committed."

Mr. Clarke, in his work on Extradition, has collected a number of cases bearing upon the point. During the late civil war, one Burley was demanded by the United States from Canada, upon a charge of robbery committed on board the steamer "Philo Parsons on Lake Erie." He claimed before the Canadian authorities that the act was belligerent in the service of the Confederate States. As he failed to show any commission or authority for doing the act, but only an adoption of the act after it was done, he was surrendered, and upon a trial in Ohio the jury disagreed, and he was finally discharged. The case attracted attention in England upon the suggestion that it was contemplated to put the prisoner on trial for piracy, and the law officers were inquired of as to its legality. They held that if the United States put him *bonâ fide* on his trial for the offence in respect to which he was given up, it would be difficult to question their right to try him for any other offence, whether within the treaty or not. One answer was: "We admit in this country that if a man is *bonâ fide* tried for the offence for which he was given up, there is nothing to prevent his being subsequently tried for another offence either antecedently committed or not." It is quite evident that the question was regarded

as one of good faith, as the legal obligation claimed in this case could not depend upon whether the prisoner was tried for the particular offence or not: Clarke on Ex. 90 note.

In France the question has frequently been considered by the courts, whose decisions have not been entirely uniform. In one case the decree recited that it was a matter of principle that an accused person should only be tried for the offence for which he was surrendered, except with his express consent: Id. 169. Subsequently the Minister of Justice intervened and insisted that the courts could not interfere, and had no concern with questions relating to extradition, and that if the question was raised they could only suspend proceedings until the government should decide. He said that "a criminal could acquire no right against the justice of his country. The tribunal had nothing to do but to try the facts, it could not take cognisance of the conditions upon which extradition had been granted, except upon a notification from the Minister of Justice."

The Court of Cassation finally adopted these views, and they may be regarded as the settled practice of the French courts: Id. 172.

These authorities indicate at least the views entertained in this country, England and France, which are, as far as they go, against the position claimed. In none of them is there an allusion to any treaty obligation. If such a provision had been inserted in the treaty, it would of course have secured to the defendant a legal right of immunity from detention for other purposes. A treaty is a contract, and is to be construed upon principles similar to those applied to other contracts. Anything necessarily implied is as though inserted; but can it be said that there is such an implication of an agreement on the part of the United States that the prisoner shall not be detained for any other lawful purpose? It may be conceded that such a provision would be wise and proper, but can it be regarded *as in the treaty?* I can find no authority warranting such a conclusion; on the contrary, the cases are quite uniform against it. The English Parliament has since passed an act to meet the difficulty: 33 and 34 Vict. ch. 52. It is designated "The Extradition Act of 1870;" and provides that a fugitive criminal shall not be delivered up unless by the law of the foreign country, or by arrangement, he cannot be tried for any but the extradited offence until he has an opportunity of returning to that country, and the same provision of immunity from prosecution is

secured in favor of fugitives delivered to that country. These provisions would have been unnecessary if there existed any such implied obligation as is claimed in this case. While we appreciate the justice and fairness in the abstract of the principle adjudged in the court below, in view of the authorities referred to, and in the absence of any legal principle upon which it can rest, we do not feel justified in holding that there is such an implied obligation which can be enforced by the courts at the instance of the defendant as will prevent a prosecution for other offences, or civil liabilities.

The right of exemption from prosecution, if it can be said to exist at all, is based upon the good faith of the government, which is necessarily uncertain, and is a political and not a judicial question. Congress doubtless has power to pass an act similar to the English act referred to, as the whole subject of extradition is confided to the Federal Government. It has exercised this power by passing an act to protect fugitive criminals from lawless violence: 15 U. S. Stat. at Large 337, sec. 1. That these provisions ought to be extended to protection from other prosecutions or detentions I do not doubt, but until this is done by the law-making power, by treaty or statute, we feel constrained to hold that the courts cannot interfere.

As the present plaintiffs were not concerned in the alleged fraud of procuring the defendant to be brought within the jurisdiction of the state, we can see no ground for setting aside the order of arrest.

The order of the General Term must be reversed and that of the Special Term affirmed.

All concur, except GROVER and FOLGER, JJ., dissenting.

United States Circuit Court. District of Virginia.

THE STEAMER OLER.

The admiralty jurisdiction of the United States courts extends to a tort, committed by collision on an artificial ship canal connecting navigable waters which are within that jurisdiction.

Where by a collision one vessel is left helpless in the track of navigation, and on the following day is injured by a passing vessel, the vessel in fault in the original collision is liable for the cost of repairing the injuries received by the disabled vessel in the second collision.